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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949 No. 328

ROLAND J. CHRISTY,
Petitioner

v.

SAMUEL D. CONVER (DECEASED), THOMAS A. FOULKE, SAMUEL H. HIGH, JR., ROGER B. REYNOLDS AND FRANKLIN L. WRIGHT, CONSTITUTING THE COUNTY BOARD OF LAW EXAMINERS OF MONTGOMERY COUNTY

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF CERTIORARI

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PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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Roland J. Christy,
Petitioner

v.

Samuel D. Conver (Deceased), Thomas A. Foulke, Samuel H. High, Jr., Roger B. Reynolds and Franklin L. Wright, Constituting the County Board of Law Examiners of Montgomery County.

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF CERTIORARI.

COUNTER STATEMENT OF FACTS.

The petitioner, Roland J. Christy, is an attorney-at-law who was admitted to the Bar of the Supreme Court of Pennsylvania and to the Bars of the Courts of Philadelphia County in 1934 (R. 3a, 4a).

In October, 1947 petitioner applied for admission to the Bars of the Courts of Montgomery County, Pennsylvania (R. 30a). In accordance with the Rules of the Courts of Montgomery County, this application was in effect an application for admission on the first Monday of May, 1948 (R. 107a).

On April 9, 1948 the Secretary of the Board of Law Examiners of Montgomery County wrote to the petitioner and enclosed a copy of the Rules of Court of Montgomery County governing admissions of attorneys to the Bar, and also enclosing forms of applicant's declarations required under Rule 7, paragraph 9 (5) (R. 13a, 38a, 45a). Rule 7, paragraph 9 (5) of the Rules of Court of Montgomery County provided as follows:

> "Such applicant shall also deliver to the said Board a declaration signed by him, setting out that he intends permanently to practice in this county, and that he will, within three weeks of his admission, open and maintain his principal office therein, and that failure to do so, or removal of his principal office to another county shall be construed as a request by him to have his name stricken from the Roll of the Bar of this county. If the said Board shall approve the applicant this declaration shall be attached by the Board to their certificate recommending his admission, which shall be produced in open court when his motion for admission is made, and shall be filed thereafter with the prothonotary" (R. 105a).

This Rule has been approved by the Supreme Court of the Commonwealth of Pennsylvania by decision and it has been designated as a proper regulation under Pennsylvania Supreme Court Rule 12½ (printed in full in Appendix), which provides, *inter alia*, as follows:

> "Admission to the bar of this court shall entitle anyone so admitted, to admission to the bar of any other court of this Commonwealth, subject, however, to the right of the examining board of the county in which his or her application for admission to the bar is filed to pass upon the applicant's moral character, notwithstanding any prior certification to such

effect by the examining board of the county of his original registration, and subject, further, to the applicant's filing with the county examining board, if local rules so require, his written promise to establish and maintain his principal office and place of law practice in the county to whose bar he seeks admission."

On April 9, 1948 the petitioner was advised by the Secretary of the Board of Law Examiners of Montgomery County that the declarations enclosed in his letter should be signed and returned no later than April 16, 1948 in order to complete his application for admission pending before the Board (R. 38a).

The declarations forwarded to the petitioner on April 9, 1948 were not signed and returned by him to the Board of Law Examiners of Montgomery County (R. 13a, 94a).

On April 21, 1948 the Secretary of the Board of Law Examiners of Montgomery County wrote to the petitioner and advised him that the Board of Law Examiners of Montgomery County had considered his application for admission to the Bar of the Courts of Montgomery County, Pennsylvania, and further informed him that since he had failed to comply with the requirement of Rule 7, paragraph 9 (5) of the Rules of the Court of Common Pleas of Montgomery County (and identical rule of the Orphans' Court of Montgomery County), by filing with the Board a declaration as required thereby, the Board was without authority to recommend to the Courts that he be admitted to practice before them and that they therefore had decided not to recommend him for admission to the Bar on May 3, 1948 (R. 13a, 39a, 46a).

Petitioner on April 28, 1948 then filed in the Court of Common Pleas of Montgomery County a petition for admission to the Bar of the Courts of Montgomery County and the Court entered an order treating it as in the nature of an appeal from the refusal of the County Board of

Law Examiners to recommend the petitioner for admission to the Bar of Montgomery County (R. 1a).

The case was heard and argued on May 10, 1948 and thereafter on November 23, 1948 the petition was dismissed in opinions handed down by President Judge Knight (R. 100a, 102a).

On appeal to the Supreme Court of Pennsylvania, the decision of the Court of Common Pleas of Montgomery County was affirmed (R. 112).

QUESTIONS PRESENTED.

1. Is a rule of a local Court of Common Pleas valid which requires an applicant for admission to its Bar to deliver to the local Board of Law Examiners a signed declaration of his intention to open and maintain his principal office within the County?

2. Does a Rule of a State Supreme Court, which permits County Courts to require an applicant for admission to the Bar of the said County Courts to file a written promise to establish and maintain his principal office and place of law practice in the County to whose Bar he seeks admission, violate the due process clause of the 14th Amendment to the Federal Constitution?

The first question above was answered in the affirmative in the Court below. The second question was answered in the negative.

REASONS FOR DENYING THE WRIT.

1. The Supreme Court of Pennsylvania has decided that the Courts of this Commonwealth are separate entities and each has the right to make reasonable rules governing the admission of attorneys. This involves the exercise of judicial power which is vested in the courts by Article V, Section 1, of the Pennsylvania Constitution. STEWART v. BECHTEL (1948), 360 Pa. 123, 128. The power thus vested is, of course, subject to the paramount super-

visory power of this Court over the courts of this Commonwealth as is evidenced by the recent promulgation of Rule 12½, which provides for admission of attorneys to the various courts but permits the said courts to require from the applicant a written promise to establish and maintain his principal office and place of law practice in the county to which he seeks admission.

The Courts of Montgomery County have long had a rule requiring a candidate for admission to the local Bar to make a written declaration that he intends permanently to practice in the County, and that he will open and maintain his principal office therein (R. 105a).

The petitioner having failed to file such a declaration was refused admission to the Courts of Montgomery County. This action was first taken on a recommendation of the local Examining Board, the Respondents here, and again in a proceeding instituted by petitioner before the Court of Common Pleas in Montgomery County.

The Supreme Court of Pennsylvania, by establishing the rule first above quoted, acted in accordance with long established practice of all the Courts in the United States, whereby such Courts have full power to determine the qualifications of applicants for admission to a State Bar. Such power has been consistently recognized by the Supreme Court of the United States. BRADWELL v. STATE (1872), 16 Wall 130; IN RE LOCKWOOD (1894), 154 U. S. 116. This has been so, even in cases where this Court itself did not particularly approve of the qualifications established by the State Court or the State Constitution, IN RE SUMMERS (1945), 325 U. S. 561 and it was clearly stated in BRADWELL v. STATE, 16 Wall 130, 139:

> "the right to control and regulate the granting of license to practice law in the courts of the State is one of those powers which are not transferred for its protection to the Federal Government, and its exercise is in no manner governed or controlled by citizenship in the party seeking such license."

By so ruling the Court refused to inquire into the reasonableness or propriety of the rule the State Court may prescribe.

It will be noted that the instant case is clearly distinguishable from the disbarment cases cited by the petitioner (Petition—page 7) where this Court has held that the Constitutional protection should be afforded in that this is not a case of disbarment at all, and even in those cases the question as to denial of due process arose only in one—Ex Parte Wall (1882), 107 U. S. 265. It was there held that disbarment proceedings were within proper jurisdiction of the particular Court and not an invasion of the Constitutional provisions prohibiting denial of life, liberty or property without due process of law.

2. The petitioner contends that the case at Bar is distinguishable from those cases deciding that admission to the State Bar is within the sole determination of the State Court, because the petitioner is a member of the Pennsylvania Supreme Court Bar, and the sole question is his admission to a local County Bar. The latter is no basis for distinction, because the County Courts of Pennsylvania are regulated by rule of the Pennsylvania Supreme Court. It is in accordance with such expressed rule as quoted above that the Montgomery County Court refused admission to the petitioner. While it is true that the County Court is granted permission to exclude an applicant if he does not maintain his principal office within the County, such rule-making discretion in the County Court is based on the same principle many Courts have adopted in establishing boards of law examiners to prescribe rules of admission and to make recommendations for the acceptance of applicants to the Courts.

Moreover, since the rule has been established by the State Supreme Court, it is not a question to be reviewed by this Court, which has long recognized the sole determination of the State Court to be controlling. If this

Court may not inquire into the action of the State Court, how much less so can it enter upon the question of admission to the Bar of lower courts. This case is governed entirely by the decision of IN RE SUMMERS, 325 U. S. 561. The power to prescribe all necessary rules for the admission of persons desiring to practice, subject, of course, to the paramount authority of the Constitution and laws of the State, exists as one of the inherent privileges necessarily incident to the Court's control over the membership of its Bar. No attack can be made on this local rule without declaring invalid the rule of the Pennsylvania Supreme Court.

3. The reasonableness of the Supreme Court of Pennsylvania's rule, herein questioned, was raised in OLMSTEAD'S CASE (1928), 292 Pa. 96, and the Court there fully discussed almost exactly the same local rule in Delaware County. The Court stated at page 105:

> "As said in the opinion disposing of appellant's application, the Court below was 'justified in taking such reasonable steps as suggest themselves to expedite properly its business and to prevent undue congestion of its calendars.' To show that the rule under discussion was 'calculated' to advance the ends just mentioned, the opinion states a view which conceivably may be taken, that an attorney will naturally give preference to business which originates in the county where his principal office is located and the bulk of his business is conducted, 'rather than to business originating in some other county and conducted in its courts, where a conflict between the two arises, as, for instance, where his attendance may be required in different cases in the different counties at the same time'."

The above quotation states the position of the Pennsylvania Supreme Court. It is not an arbitrary rule, but

a rule adopted for the convenient dispatch of cases before the local court. In its application the rule establishes no monopoly of "home town talent" as contended in the petition (page 9), but allows, without discrimination, all attorneys desiring to practice within the County to become admitted upon compliance with its rather simple requirements.

The petitioner has the right to practice law as a counsellor in any part of the Commonwealth by virtue of his membership in the Bar of the Pennsylvania Supreme Court. He also has the right to and does carry on his profession as an attorney before the Courts of Philadelphia County, of whose Bar he has long been a member. He can become a member of the Montgomery County Bar at any time he sees fit to declare in writing that he will, within three weeks after admission, open his principal office in that County.

The general public, the community and the courts, it has been found in this State, will be better served and the business of the Court more expeditiously handled by a group of attorneys established and maintaining offices within the County in which they serve, rather than by a group of itinerant practitioners travelling where the fee beckons. The existence of local County Bars has a long history in Pennsylvania, and its desirability has been consistently recognized by the Supreme Court of the State, as evidenced by the cases repeatedly deciding its validity. Petition of Splane (1889), 123 Pa. 527; Olmstead's Case (1928), 292 Pa. 96 and Stewart v. Bechtel (1948), 360 Pa. 123.

This case is indistinguishable in principle from In Re Summers, 325 U. S. 561, decided by this Court in 1945. In that case, however, there was an alleged invasion of the petitioner's civil rights in the apparent discrimination against a conscientious objector. The present case in no sense raises any question of religious or other discrimination or of deprivation of civil rights. Moreover, the

rule of the Pennsylvania Supreme Court is not at all extraneous to the actual procedure of the courts but rather is directly calculated to expedite their business. It is submitted, therefore, that the questions here presented are governed by the rule enunciated in IN RE SUMMERS and the same result *a fortiori* should follow.

WHEREFORE, respondents pray your Honorable Court to deny the petition requested for Writ of Certiorari.

Respectfully submitted,

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RAYMOND PEARLSTINE,
JOSEPH KNOX FORNANCE,
Attorneys for Respondents.

APPENDIX.

Rule 12½ of the Pennsylvania Supreme Court effective March 23, 1949.

"Admission to the bar of this Court shall entitle anyone so admitted, to admission to the bar of any other court of this Commonwealth, subject, however, to the right of the examining board of the county in which his or her application for admission to the bar is filed to pass upon the applicant's moral character, notwithstanding any prior certification to such effect by the examining board of the county of his original registration, and subject, further, to the applicant's filing with the county examining board, if local rules so require, his written promise to establish and maintain his principal office and place of law practice in the county to whose bar he seeks admission.

In case an otherwise qualified applicant is denied admission to the bar of the county on the ground of a lack of the requisite moral qualifications, he or she shall have a right to a hearing on that issue before the county examining board, and if the decision is adverse to the applicant, the latter shall have a right of appeal to the State Board of Law Examiners, and if the decision there should also be adverse, the applicant shall have a right of appeal to this Court. Should the decision of the State Board of Law Examiners be a reversal of the decision of the county board of law examiners, the latter shall likewise have a right of appeal to this Court. The county board of law examiners shall have a stenographic record made of the hearing on the issue as to the applicant's moral qualifications, and every appeal herein pro-

vided for shall be accompanied by a transcript of that record.

Any and all local rules for admission to the respective bars of the courts of the several counties of this Commonwealth, which prescribe length of residence in that county as a prerequisite to admission to the local bar or limit the number of admissions upon a quota basis, are hereby superseded."